

## **OFFICE OF EXECUTIVE POLICY AND PROGRAMS FAMILY AND MEDICAL LEAVE ACT POLICY AND PROCEDURE**

**THE LANGUAGE USED IN THIS DOCUMENT DOES NOT CREATE AN EMPLOYMENT CONTRACT BETWEEN THE EMPLOYEE AND THE AGENCY. THIS DOCUMENT DOES NOT CREATE ANY CONTRACTUAL RIGHTS OR ENTITLEMENTS. THE AGENCY RESERVES THE RIGHT TO REVISE THE CONTENT OF THIS DOCUMENT, IN WHOLE OR IN PART. NO PROMISES OR ASSURANCES, WHETHER WRITTEN OR ORAL, WHICH ARE CONTRARY TO OR INCONSISTENT WITH THE TERMS OF THIS PARAGRAPH CREATE ANY CONTRACT OF EMPLOYMENT.**

### **I. Eligibility**

Any employee of the Governor's Office who has worked for the State at least 12 months, not consecutive, and 1250 hours prior to requesting leave under the Family and Medical Leave Act (FMLA) may be eligible for leave in accordance with this policy and the Family and Medical Leave Act.

### **II. Use of FMLA Leave**

An eligible employee shall be granted up to a total of 12 workweeks, 60 workdays, 450 hours for employees who work 7.5 hours or 480 for employees who work 8 hours per day, of FMLA leave in each calendar year on a continuous or intermittent basis, for any of the following reasons:

- Birth of a child and to care for the newborn child
- Placement of a child for adoption or foster care
- Serious health condition of a spouse, child or parent
- Serious health condition of the employee

### **III. Definitions**

Spouse means husband or wife as defined or recognized in the State where the employee resides, including common-law marriage.

Parent means a biological parent or an individual who stands or stood in when the employee was a son or

daughter as defined below. This term does not include “parents in-law.”

Child, son or daughter, means a biological, adopted, foster, stepchild, a legal ward or child incapable of self-care either under or over the age of 18 and mentally or physically disabled.

“Incapable of self-care” means that the individual requires active assistance to provide daily self-care of three or more daily activities such as grooming, hygiene, bathing, dressing and eating.

“Physical or mental disability” means a physical or mental impairment that substantially limits one or more of the major life activities.

#### **IV. Scheduling FMLA Leave**

An employee requesting FMLA leave must, when foreseeable, give 30 days advance notice to the Agency of the need to take FMLA leave.

#### **V. Certification of FMLA Leave**

The Governor’s Office may require employees requesting FMLA leave to provide a health care certification form to support the need for leave due to a serious health condition affecting the employee or the employee’s spouse, son, daughter or parent. The Governor’s Office may request the employee to provide reasonable documentation or statement of family relationship. The documents may include but not limited to: child’s birth certificate, or a court document or statement from the employee. All official documents obtained for these purposes will be returned to the employee. The failure to comply with the health care certification form may result in a delay or denial of FMLA leave.

#### **VI. Declaration and Charging of FMLA Leave**

It is the Agency’s responsibility to declare leave as FMLA leave based on the information provided by the employee and health care certification form. It is important the Office/Division liaison, manager or supervisor notify the Human Resources Office immediately if an employee’s absence is due to one of the FMLA qualifying reasons. If there is any doubt as to whether or not the absence qualifies as FMLA leave, the Governor’s Office of Human Resources should be contacted to make the declaration. When leave is declared, the Human Resources Office must notify the employee of such declaration. A declaration letter will be sent to the employee’s home address.

- Generally, no leave will be designated as FMLA leave after the employee has returned to work.

- An eligible employee's FMLA leave allowance will be charged for the actual time an employee must be away from the job.
- The FMLA leave will run concurrently with any other leave and should be charged against both leave categories' allowances.
- Eligible employees will be required to use their accrued sick leave for FMLA leave.
- If an employee's sick leave has been exhausted, they have the option of using annual leave or leave without pay.

Spouses employed by the same employer (SC State Government) are jointly entitled to a combined total of 12 weeks of FMLA leave for the birth or placement of a child for adoption or foster care.

If an employee was absent for an FMLA reason and the Agency did not learn the reason for the absence until afterwards or upon the employee's return, the Agency may designate the leave retroactively with appropriate notice to the employee. It is imperative for the supervisor and/or liaison to contact the Human Resources Office when there is any question regarding FMLA qualifying reasons for absences.

## **VII. Intermittent FMLA Leave/ Reduced Leave Schedule**

Under certain circumstances, by following the healthcare certification form, employees may take FMLA leave intermittently by taking leave in blocks of time, or by reducing the normal weekly or daily work schedule.

When FMLA leave is medically necessary to care for a seriously ill family member or because the employee is seriously ill and limited to function in some specific job duties, FMLA leave may be taken intermittently in appropriate circumstances. In certain instances, alternative job options may be explored to further assist the employee.

When FMLA leave is used for the birth or placement for adoption or foster care, use of intermittent leave is subject to the Governor's Office approval.

## **Maintenance of Insurance Benefits**

The Governor's Office will maintain group insurance coverage for an employee on FMLA leave whenever such insurance was provided before the leave was taken and on the same terms as if the employee had continued to work. The employee is responsible for the employee portion of the insurance premiums. Should the employee take leave without pay during the FMLA leave, the employee must make arrangements with the Governor's Office of Human Resources to pay for his/her share of the insurance premiums while on unpaid FMLA leave.

The Governor's Office is obligated to maintain group insurance benefits under FMLA leave. However, when the employee notifies the Governor's Office of his/her intent not to return to work, the employee is responsible for the full insurance premium.

## **VIII. Reinstatement from FMLA Leave**

The employee should provide a physician's release upon their return to work. On return from FMLA leave, an employee is entitled to be returned to the same position the employee held when the FMLA leave commenced, or to an equivalent position with equivalent benefits, pay, and other terms and conditions of employment. That position must involve the same or substantially similar duties and responsibilities, which must entail equivalent skill, effort, responsibility and authority.

## **IX. FMLA Leave Records**

The Payroll Office will maintain a leave record for each employee covered under the provisions of FMLA.

## **X. Transfer of FMLA Leave Records**

For eligible employees who transfer from one state agency to another, the FMLA leave records for that calendar year will be transferred to the receiving agency.

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